

89-20

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2 REGION IX

3 IN THE MATTER OF;  
4 Garden Valley Ranch Estates  
5 Community Services District  
6 Eldorado County, California,

7 Respondent.

8 Proceeding under Section 122 (h) (1)  
9 of the Comprehensive Environmental  
10 Response, Compensation, and  
11 Liability Act of 1980 (42 U.S.C.  
§ 9622(h) (1) as amended by the  
Superfund Amendments and  
Reauthorization Act of 1986,  
Pub. L No. 99-499

DOCKET NO. 89-20

12 ADMINISTRATIVE CONSENT ORDER

13 I. Statement of Jurisdiction and Purpose

14 A. This Consent Order is made and entered into by the U.S.  
15 Environmental Protection Agency ("EPA"), and Garden Valley Ranch  
16 Estates Community Services District ("Garden Valley"). The pur-  
17 pose of this Consent Order is: 1) to provide reimbursement to EPA  
18 for response costs incurred at or in connection with a removal  
19 action of asbestos material on roadways of the Garden Valley  
20 Ranch Estates Property ("the Site"), and 2) to resolve EPA's  
21 claims against Garden Valley for such response costs.

22 B. EPA is authorized to enter into this Consent Order pur-  
23 suant to the authority vested in the EPA Administrator by Section  
24 122(h) (1) of the Comprehensive Environmental Response,  
25 Compensation, and Liability Act of 1980 ("CERCLA"), as amended by  
26 the Superfund Amendments and Reauthorization Act of 1986

1 ("SARA"), which authority has been delegated to the Regional Ad-  
2 ministrator of the EPA by EPA Delegation No. 14-14-D (Feb. 26,  
3 1987) and redelegated to the Director, Hazardous Waste Management  
4 Division, EPA Region 9.

5 C. This Consent Order shall be binding upon EPA and Garden  
6 Valley, its directors, officers, employees, agents, successors  
7 and assigns. Each signatory to this Consent Order represents  
8 that he or she is fully authorized to enter into the terms and  
9 conditions of this Consent Order and to legally bind the party  
10 represented by him or her. Garden Valley agrees to undertake all  
11 actions required by this Consent Order.

12 D. Garden Valley consents to and will not contest EPA's  
13 authority to enter into this Consent Order or to implement or to  
14 enforce its terms.

15 II. Facts and Law

16 A. Hazardous substances, pollutants, and/or contaminants as  
17 defined in Sections 101(14) and 104(a)(2) of CERCLA, 42 U.S.C. §§  
18 9601(14) and 9604(a)(2), were or were threatened to have been  
19 released into the environment at the Site.

20 B. As a result of releases or threatened releases, EPA un-  
21 dertook response actions at the Site pursuant to Sections 104(a)  
22 106(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9606(a).

23 C. On August 8, 1988, formal demand for response costs was  
24 made of Garden Valley in the amount of \$166,550.81.85. EPA has  
25 incurred costs at least in the amount of \$166,550.81 in perform-  
26 ing response activities in connection with the Site. EPA is en-

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1 titled to seek recovery from responsible parties for response  
2 costs incurred at or in connection with releases of hazardous  
3 substance, including interest, pursuant to CERCLA section 107(a).

4 D. Garden Valley, as the operator of the facility at the  
5 time of EPA's response action, is a responsible party pursuant to  
6 Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is liable for  
7 response costs incurred at or in connection with the Site.

8 E. EPA has determined that a settlement of the response cost  
9 liability for \$25,000 is in the public interest.

10 **III. Agreement**

11 A. Garden Valley agrees to pay to the Hazardous Substance  
12 Superfund \$25,000 according to the following schedule:

- 13 1. \$12,500 on or before January 15, 1990;  
14 2. A final \$12,500 on or before May 15, 1990.

15 B. Each payment shall be made by check made payable to  
16 "EPA-Hazardous Substance Superfund." The check shall be sent to:

17 EPA Superfund, Region 9  
18 P.O. Box 360863M  
19 Pittsburgh, Pennsylvania 15251

20 C. Garden Valley shall simultaneously send a copy of each  
21 payment check to:

22 Sharon Johnson  
23 Case Development Section (T-4-10)  
24 U.S. Environmental Protection Agency  
25 Code T-4-10  
26 215 Fremont Street  
27 San Francisco, CA 94105

D. In addition to any other remedies or sanctions available

1 to EPA, if Garden Valley fails or refuses to comply with any term  
2 or condition of this Consent Order, it shall be subject to en-  
3 forcement action pursuant to Section 122 (h)(3) and Section 122  
4 (1) of CERCLA.

5 E. Subject to Paragraph III.G of this Consent Order, upon  
6 payment of the amount specified in Paragraph III.A. of this Con-  
7 sent Order in accordance with the schedule therein, EPA covenants  
8 not to sue or to take any other civil or administrative action  
9 against Garden Valley for "Covered Matters." Covered Matters  
10 shall include civil liability under Section 107(a) of CERCLA, 42  
11 U.S.C. §9607(a), for reimbursement of response costs incurred at  
12 or in connection with the Site as of the effective date of this  
13 Consent Order. EPA agrees that by entering into and carrying out  
14 the terms of this Order, Garden Valley will have resolved its  
15 liability to the EPA for "Covered Matters" pursuant to Section  
16 113(f)(2) of CERCLA and shall not be liable to other parties for  
17 claims for Covered Matters.

18 F. This Consent Order shall not constitute any admission of  
19 liability or responsibility for any contamination of the Site.  
20 By entering into this Consent Order, Garden Valley does not admit  
21 the validity of any of the factual or legal assertions made by  
22 the EPA and does not admit to any violation of law.

23 G. Garden Valley reserves any and all rights of contribu-  
24 tion from any or all persons who are not named in this Consent  
25 Order for all costs incurred by Garden Valley. Nothing in this  
26 Order shall be construed as limiting Garden Valley's right to  
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1 seek contribution from any or all liable persons who are not  
2 named in this Consent Order.

3 H. Nothing in this Order is intended to be nor shall it be  
4 construed as a release or covenant not to sue for any claim or  
5 cause of action, administrative or judicial, civil or criminal,  
6 past or future, in law or in equity, which EPA may have against  
7 Garden Valley for:

8 a) any liability as a result of failure to make the  
9 payments in accordance with Paragraph III.A. of this Order; or

10 b) any matters not expressly included in Covered Mat-  
11 ters, including, without limitation, any liability for damages to  
12 natural resources or future response costs incurred after the ef-  
13 fective date of this Order.

14 I. Nothing in the Order is intended to be nor shall be con-  
15 strued as a release or covenant not to sue for any claim or cause  
16 of action, administrative or judicial, civil or criminal, past or  
17 future, in law or in equity, which EPA may have against any  
18 person, firm, corporation or other entity not a signator to this  
19 Consent Order.

20 J. In consideration of EPA's covenant not to sue in  
21 Paragraph III.E. of this Order, Garden Valley agrees not to  
22 assert any claims or causes of action against the EPA or the Haz-  
23 ardous Substance Superfund arising out of response activities un-  
24 dertaken at the Site, or to seek any other costs, damages, or  
25 attorney's fees from the United States, its agencies, employees  
26 or contractors arising out of response activities undertaken at  
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1 the Site. Garden Valley waives any right it might have to af-  
2 firmatively seek reimbursement from EPA for any cost pursuant to  
3 42 U.S.C. §9606 pertaining to this Site.

4 K. This Order shall be subject to a thirty-day public com-  
5 ment period pursuant to Section 122(i) of CERCLA. In accordance  
6 with Section 122(i)(3) of CERCLA, EPA may withdraw its consent to  
7 this Order if comments received disclose facts or considerations  
8 which indicate that this Order is inappropriate, improper or in-  
9 adequate. The Director of the Hazardous Waste Management Divi-  
10 sion, EPA Region 9, has determined that the total response costs  
11 incurred to date at or in connection with the Site do not exceed  
12 \$500,000, excluding interest.

13 L. The effective date of this Consent Order shall be the  
14 date upon which Garden Valley receives written notification from  
15 EPA that the public comment period pursuant to Paragraph III.K.  
16 of this Consent Order has closed and that the comments received,  
17 if any, do not require modification of or EPA withdrawal from  
18 this Consent Order.

19 IT IS SO AGREED.

20 Garden Valley Ranch Estates Community Services District

21 By: M. Ozzie Chamberlain  
Ozzie Chamberlain, Chairman  
22 Garden Valley Ranch Estates  
Community Services District  
23

Sept. 20, 1989  
DATE

24 U.S. Environmental Protection Agency

25 By: Jeff Zelikson  
Jeff Zelikson  
26 Director, Hazardous Waste  
Management Division,  
27 Region IX

25 September 1989  
DATE